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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Petitions

In re Application of)
)
Hans SACHSE) Art Unit: 3763
)
Serial No. 09/742,354) Examiner: Ghafoorian
)
Filed: December 22, 2000)
)
For: PROBE FOR SMALL INTESTINES

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October 27, 2003
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Honorable Comm'r. of Patents
PO Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.144

Applicants hereby petition to the Honorable Commissioner to review the final Restriction Requirement of April 22, 2003. Specifically, applicants request the Office to rejoin claims 11-13 with the other elected claims and to give further consideration to these claims on the merits.

Statement of Facts

This application was filed on December 22, 2000. The Examiner issued a first requirement for election and restriction on September 12, 2002. Applicants responded on January 13, 2003 by amending the claims, electing Species A--figure I, and presenting arguments traversing the restriction requirement. In an Office action of April 22, 2003, the Examiner indicated that the Restriction Requirement was final and that

claims 11-13 were withdrawn from further consideration. Claims 11-13 are dependent on claim 1. This petition follows.

A copy of the claims (1-17) is appended hereto.

Argument

"Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first." MPEP 806.04(f). Here, claims 11-13 which the Examiner has withdrawn from consideration are all *dependent* on the elected claims. In other words, claim 1 contains no limitations which are not also present in claims 11-13 which depend from claim 1. Thus, claim 1 and each of claims 11-13 are not mutually exclusive. Therefore, restriction is improper.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

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APPENDIX

1. A probe for small intestines comprising

a probe tube (4) comprising a tip area (6) and a tip (2) having an outlet opening (1), and

a guide stylet (5) with a shape with a curved tip area (6'),

wherein the probe tube (4) and the guide stylet (5) each have a flexibility such that, in the absence of an external force, the shape of the guide stylet (5) is substantially imparted on the tip area (6) of the probe tube (4) when inserted therein.

2. The probe of claim 1, wherein the probe tube (4) is more flexible in the tip area (6) than in the rest of the tube.

3. The probe of claim 1, wherein the guide stylet has a spherically shaped tip (11).

4. The probe of claim 1, wherein the probe tube is thinner in the tip area (6) than in the rest of the probe tube (4).

5. The probe of claim 1, further comprising additional outlet openings (3) in the tip area (6).

6. The probe of claim 1, wherein the probe tube (4) is made from a plastic material.

7. The probe of claim 1, wherein the guide stylet (5) is made from a metal having a memory-effect.

8. The probe of claim 1, further comprising a termination (8) for connecting the guide stylet (5) to the probe tube (4).

9. The probe of claim 1, further comprising a fluid injection connector (7) on the probe tube (4).

10. The probe of claim 1, wherein the guide stylet (5) is sufficiently flexible so that it does not impart its shape on the probe tube (4) when the probe tube (4) is inserted in a human esophagus.

11. The probe of claim 1, wherein the probe tube comprises an outer tube and an inner stiffening tube (14) which does not extend into the tip area (6) of the probe tube (4).

12. The probe of claim 11, wherein the inner stiffening tube (14) is sufficiently rigid so that when the inner stiffening tube (14) and the guide stylet (5) are inserted into the probe tube (4), the guide stylet (5) does not substantially impart its shape on the inner stiffening tube (14).

13. The probe of claim 1, further comprising a sheath (13) on the probe tube (4) which is sufficiently rigid so that when the guide stylet (5) is inserted into the probe tube (4), the guide stylet (5) does not substantially impart its shape on the probe tube (4).

14. A process for delivering fluid to small intestines with a probe,

said probe comprising

a probe tube (4) comprising a tip area (6) and a tip (2) having an outlet opening (1), and

a guide stylet (5) with a shape with a curved tip area (6'),

wherein the probe tube (4) and the guide stylet (5) each have a flexibility such that, in

the absence of an external force, the shape of the guide stylet (5) is substantially imparted on the tip area (6) of the probe tube (4) when inserted therein

said process comprising the steps of

inserting the probe tube (4) into a patient's stomach by way of the patient's esophagus,

inserting the guide stylet (5) into the probe tube (4) thereby causing the shape of the guide stylet (5) to be substantially imparted on the tip area (6) of the probe tube (4),

inserting the tip (2) of the probe tube (4) into the patient's small intestines by way of the patient's pylorus, and

passing the fluid through a lumen (9) and the opening (1) of the probe tube.

15. The process of claim 14, further comprising the step of spraying X-ray contrast medium into the probe tube (4) prior to inserting the tip (2) of the probe tube (4) into the small intestines.

16. The process of claim 14, further comprising inserting a second straight stylet into the probe tube (4) prior to inserting the probe tube (4) into the stomach.

17. The process of claim 14, wherein the probe tube comprises an outer tube and an inner stiffening tube (14) which does not extend into the tip area (6) of the probe tube (4).